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IN THE
COURT OF APPEALS OF INDIANA

KELLY A. WATKINS SPAULDING,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 85A02-0604-CR-338
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE WABASH CIRCUIT COURT
The Honorable Robert McCallen, III, Judge
Cause No. 85C01-0407-FD-78

September 15, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Kelly Watkins Spaulding appeals her conviction for Neglect of a Dependent, as a Class D felony, following a jury trial. She presents a single issue for our review, namely, whether the State presented sufficient evidence to sustain her conviction.

We affirm.

FACTS AND PROCEDURAL HISTORY

In the summer of 2004, Spaulding and her sixteen-year-old son, A.O., lived together in LaFontaine. Spaulding left A.O. home alone twice that summer for a total of three weeks while she went "up north" with a male friend. Transcript at 27. She did not tell him where she was going or when she would return. During her absence, Spaulding did not contact A.O. and left him with no money, very little food, and no water. Their home was also without phone service, and A.O. had no access to transportation. Because the water had been turned off, A.O. could not wash his clothes and had to shower at his grandmother's house. He also urinated outside and otherwise used the restroom at a neighbor's house. He cooked the four frozen dinners his mother had left him with a propane torch.

Spaulding left A.O. the first time for about two weeks. When she returned, Spaulding brought him a package of bologna and a two-liter bottle of soda, but used her food stamps to purchase a "cooler full of food" to take with her on a camping trip. Id. at 38. Then, she left for another week. Again, A.O. was unsure of her whereabouts. He was often hungry and lost between five and ten pounds during his mother's absence because he did not have much food. A.O. also wore his clothes for about a week at a

time because he could not wash them. Ultimately, A.O.'s grandmother realized that he was without money, food, and water. She brought him food and later made him move in with her.

The State charged Spaulding with neglect of a dependent, as a Class D felony. Specifically, the State alleged that Spaulding "did knowingly or intentionally: (1) place the dependent in a situation that endangered [A.O.'s] life or health; (2) abandoned [A.O.]; or (3) deprived [A.O.] of necessary support[.]" Appellant's App. at 8. Following a jury trial, the trial court entered judgment of conviction and sentenced her accordingly. This appeal ensued.

DISCUSSION AND DECISION

Spaulding contends that the State presented insufficient evidence to sustain her conviction. When reviewing the claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of the witnesses. Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the verdict and the reasonable inferences therein to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. Id. If there is substantial evidence of probative value to support the conviction, it will not be set aside. Id.

To prove neglect of a dependent, as a Class D felony, the State was required to prove that Spaulding had the care of A.O., a dependent, and that she knowingly or intentionally (1) placed him in a situation that endangered his life or health; (2) abandoned or cruelly confined him; or (3) deprived him of necessary support. See Ind. Code § 35-46-1-4(a). Thus, because the statute is in the disjunctive, proof of only one

type of conduct is required to sustain Spaulding's conviction. See Sipe v. State, 797 N.E.2d 336, 341 (Ind. Ct. App. 2003) (finding that criminal statute, written in the disjunctive, required proof of only one type of conduct to sustain conviction). Although Spaulding concedes that A.O. is a dependent and that he was in her care, she maintains that the evidence was insufficient to prove that she placed him in a situation that endangered his life or health, that she abandoned or cruelly confined him, or that she deprived him of necessary support. We cannot agree.

"[T]he offense of neglect of a dependent, defined as knowingly or intentionally depriving a dependent of necessary support, is the actor's knowing or intentional deprivational conduct regarding food, clothing, shelter, or medical care, that results in the dependent's health or life being at risk or in danger[.]" Ricketts v. State, 598 N.E.2d 597, 601 (Ind. Ct. App. 1992), trans. denied. A person engages in conduct "knowingly" if, when she engages in the conduct, she is aware of a high probability that she is doing so. Lush v. State, 783 N.E.2d 1191, 1196 (Ind. Ct. App. 2003) (citing Ind. Code § 35-41-2-2(b)). Thus, to prove that Spaulding acted knowingly, the State had to show that she was "subjectively aware of a high probability that she [deprived A.O. of necessary support]." See Smith v. State, 718 N.E.2d 794, 806 (Ind. Ct. App. 1999) (citation omitted), trans. denied.

In Ricketts, we explained that the "deprivation of necessary support[] concerns the situation where the actor deprives the dependent of food, clothing, shelter, or medical care that is essential, indispensable or absolutely required[.]" 598 N.E.2d at 600. Thus, Indiana Code Section 35-46-1-1 defines "support" as "food, clothing, shelter, or medical

care." "[N]ecessary support is essential, indispensable or absolutely required food, clothing, shelter and medical care; i.e., food, clothing, shelter, and medical care without which the dependent's life or health is at risk or endangered." Ricketts, 598 N.E.2d at 600.

Spaulding maintains that the State did not present any evidence that she deprived A.O. of necessary support. Specifically, she alleges that A.O.'s life or health was not at risk or endangered, in part, because he was not near "the point of malnutrition." Brief of Appellant at 6. It is true that "evidence of malnutrition, in and of itself, does not support the conclusion that the person's health or life is at risk or in danger." Ricketts, 598 N.E.2d at 601. But, in the present case, Spaulding did more than leave A.O. alone with little food and no money with which to purchase food. She also knew that the water in the house had been turned off. As a result, A.O. could not shower, use the toilet, or wash his clothes. He wore his clothes "for about a week" at a time before washing them at his grandmother's house. Transcript at 41. The lack of water in the house also forced him to urinate outdoors or use the restroom at a neighbor's home.

Once more, when reviewing the claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of the witnesses. See Jones, 783 N.E.2d at 1139. We look only to the probative evidence supporting the verdict and the reasonable inferences therein to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. Id. Here, we cannot say that the State presented insufficient evidence to support Spaulding's conviction for neglect of a dependent, as a Class D felony. That is, there is sufficient evidence that Spaulding

knowingly deprived A.O. of food, clean clothes, and shelter equipped with running water sufficient for him to bathe and use the restroom, all of which is essential. Spaulding asks that we reweigh the evidence, which we will not do.

Affirmed.

FRIEDLANDER, J., and DARDEN, J., concur.